

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2413

Introduced by Assembly Member Feuer

February 24, 2012

An act to amend Section ~~1033 of the Insurance~~ 466.8 of the Penal Code, relating to ~~insurers~~ locksmithing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2413, as amended, Feuer. ~~Insurers: insolvency: claims.~~
Locksmithing: making keys: required information.

Existing law requires any person, who knowingly and willfully makes a key capable of opening any door or other means of entrance to a residence or commercial establishment for another, to obtain specified information, including the name and address of the person requesting or purchasing the key, and to retain a copy of the work order for 2 years. A violation of this provision is a misdemeanor.

This bill would require the person making the key to obtain the e-mail address, if any, of the person requesting or purchasing the key, and to retain the work order for 4 years, rather than 2 years. Because the bill would revise the definition of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law sets forth the priorities for the payment of certain claims from the assets of insolvent insurers, including claims made by California Insurance Guarantee Association and the California Life and Health Insurance Guarantee Association, but excluding certain categories of claims, including those that are not covered claims for the purposes of payment by those associations.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 466.8 of the Penal Code is amended to
2 read:

3 466.8. (a) Any person who knowingly and willfully makes a
4 key capable of opening any door or other means of entrance to any
5 residence or commercial establishment for another by any method
6 involving an onsite inspection of such door or entrance, whether
7 or not for compensation, shall obtain, together with the date the
8 key was made, the street address of the residence or commercial
9 establishment, and the signature of the person for whom the key
10 was made, on a work order form, the following information
11 regarding the person requesting or purchasing the key:

12 (1) Name.

13 (2) Address.

14 (3) (A) Telephone number, if any.

15 (B) E-mail address, if any.

16 (4) Date of birth.

17 (5) Driver's license number or identification number, if any.

18 A copy of each such work order shall be retained for ~~two~~ four
19 years and shall be open to inspection by any peace officer or by
20 the Bureau of Collection and Investigative Services during business
21 hours or submitted to the bureau upon request.

22 Any person who violates any provision of this subdivision is
23 guilty of a misdemeanor.

24 (b) Nothing contained in this section shall be construed to
25 prohibit the duplication of any key for a residence or commercial
26 establishment from another such key.

(c) Locksmiths licensed by the Bureau of Collection and Investigative Services are subject to the provisions set forth in Chapter 8.5 (commencing with Section 6980) of Division 3 of the Business and Professions Code.

(d) The provisions of this section shall include, but are not limited to, the making of a key from key codes or impressions.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 1033 of the Insurance Code is amended to read:~~

~~1033. (a) Claims allowed in a proceeding pursuant to this article shall be given preference in the following order:~~

~~(1) Expense of administration.~~

~~(2) All claims of the California Insurance Guarantee Association or the California Life and Health Insurance Guarantee Association, and associations or entities performing a similar function in other states, together with claims for refund of unearned premiums and all claims under insurance and annuity policies or contracts, including funding agreements, of an insolvent insurer that are not covered claims.~~

~~The following claims are excluded from this priority:~~

~~(A) Any obligations of the insolvent insurer arising out of any reinsurance contracts, as well as obligations incurred after the expiration date of the policy or after the insurance policy has been replaced by the insured or canceled at the insured's request, or after the policy has been canceled by the California Insurance Guarantee Association, the California Life and Health Insurance Guarantee Association, or another association or entity performing a similar function in another state.~~

~~(B) Any obligations to insurers, insurance pools, or underwriting associations, and their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter.~~

1 ~~(C) Any amount awarded as punitive or exemplary damages,~~
2 ~~and any damages in excess of the liability limits of the policies or~~
3 ~~contracts that represent damages for contractual bad faith.~~

4 ~~(D) Any amount that is a surplus deposit of a subscriber as~~
5 ~~defined in Section 1374.1.~~

6 ~~(E) Any judgments against, obligations, or liabilities of the~~
7 ~~insolvent insurer otherwise arising from alleged or proven torts,~~
8 ~~and any default, collusive, or stipulated judgment against either~~
9 ~~the insured or the person subject to proceedings under this article,~~
10 ~~as well as any judgment taken in violation of Section 1020. Nothing~~
11 ~~in this subparagraph shall prohibit the commissioner from~~
12 ~~considering the underlying claims as a claim entitled to priority~~
13 ~~under this section, provided that the claimant shall provide to the~~
14 ~~commissioner a written election that the judgment shall in all things~~
15 ~~be disregarded in determining the liability for and valuation of the~~
16 ~~underlying claim.~~

17 ~~(F) Any loss adjustment expenses, including adjustment fees~~
18 ~~and expenses, attorneys' fees and expenses, court costs, interest,~~
19 ~~bond premiums, expert witness fees, and other claims of a similar~~
20 ~~nature incurred prior to the appointment of a liquidator.~~

21 ~~(G) Claims arising from any self-insured program of the insurer,~~
22 ~~including employee life, health, annuity plans, and self-funded~~
23 ~~employee benefit plans, however denominated, as well as claims~~
24 ~~arising from a multiple employer welfare arrangement as defined~~
25 ~~in Section 514 of the federal Employee Retirement Income Security~~
26 ~~Act of 1974, as amended, a minimum premium group insurance~~
27 ~~plan, a stop-loss group insurance plan, or an administrative~~
28 ~~services-only plan.~~

29 ~~(H) Any portion of a policy or contract to the extent that it~~
30 ~~provides experience rating credits or refunds, dividends, or for the~~
31 ~~payment of fees or allowances to any person, including the~~
32 ~~policyholder or contractholder, in connection with the service to~~
33 ~~or administration of the policy or contract.~~

34 ~~(I) Any annuity issued by a charitable organization for which~~
35 ~~the person subject to these proceedings did not have or utilize a~~
36 ~~certificate of authority to issue the policy or contract.~~

37 ~~(3) Claims having preference by the laws of the United States.~~

38 ~~(4) Unpaid charges due under the provisions of Section 736.~~

39 ~~(5) Taxes due to the State of California.~~

40 ~~(6) Claims having preference by the laws of this state.~~

1 ~~(7) Claims of creditors not included in paragraphs (1) to (6);~~
2 ~~inclusive.~~

3 ~~(8) Certificates of contribution, surplus notes, or similar~~
4 ~~obligations, and premium refunds on assessable policies.~~

5 ~~(9) The interests of shareholders or other owners in any residual~~
6 ~~value in the estate.~~

7 ~~(b) (1) Every claim allowed under a separate account policy,~~
8 ~~contract, or agreement providing, in effect, that the assets allocated~~
9 ~~to the separate account are not chargeable with liabilities arising~~
10 ~~out of any other business of the insurer, shall be satisfied out of~~
11 ~~the assets properly allocated to and maintained in the separate~~
12 ~~account, excluding amounts allocated or transferred to the separate~~
13 ~~account by the insurer pursuant to subdivision (b) of Section 10506,~~
14 ~~equal to the reserves maintained in the separate account for the~~
15 ~~policies, contracts, or agreements. No liabilities of the insurer~~
16 ~~arising out of any other business of the insurer shall be satisfied~~
17 ~~from assets properly allocated to and maintained in a separate~~
18 ~~account except (A) from amounts allocated or transferred to the~~
19 ~~separate account pursuant to subdivision (b) of Section 10506, and~~
20 ~~(B) from any assets allocated to the separate account that exceed~~
21 ~~the reserves under the separate account policies, contracts, or~~
22 ~~agreements. For the purposes of this subdivision, "separate account~~
23 ~~policies, contracts, or agreements" means any policies, contracts,~~
24 ~~or agreements that provide for separate accounts as contemplated~~
25 ~~by Section 10506, 10506.3, 10506.4, or 10541. Any valid and~~
26 ~~allowed claim for contractual benefits that cannot be satisfied out~~
27 ~~of the assets properly allocated to and maintained in a separate~~
28 ~~account for obligations authorized by subdivision (a) of Section~~
29 ~~10506.3 shall be included as a claim against the general account~~
30 ~~within paragraph (2) of subdivision (a). Any valid and allowed~~
31 ~~claim against the general account for contractual benefits under~~
32 ~~an obligation authorized by Section 10506.4 shall be included as~~
33 ~~a claim within paragraph (2) of subdivision (a).~~

34 ~~(2) Notwithstanding any other provision of law, to the extent~~
35 ~~that any assets of a life insurer, other than those assets properly~~
36 ~~allocated to, and maintained in, a separate account, have been used~~
37 ~~to fund or pay any expenses, taxes, or policyholder benefits that~~
38 ~~are attributable to a separate account policy, contract, or agreement~~
39 ~~that should have been paid by a separate account prior to the~~
40 ~~commencement of delinquency proceedings, then upon the~~

1 commencement of delinquency proceedings, the separate accounts
2 that benefited from this payment or funding shall first be used to
3 repay or reimburse the company's general assets or account for
4 any unreimbursed net sums due at the commencement of
5 delinquency proceedings prior to the application of the separate
6 account assets to the satisfaction of liabilities of the corresponding
7 separate account policies, contracts, and agreements.

8 (c) Upon the issuance of an order appointing a conservator or
9 liquidator for any person under either Section 1011 or 1016 or
10 both these sections, the lien of taxes due to the State of California
11 imposed by Article 4 (commencing with Section 12491) of Chapter
12 4 of Part 7 of Division 2 of the Revenue and Taxation Code shall
13 become subordinate to the reasonable administrative expenses of
14 the proceeding under the order.

15 (d) The following definitions are for purposes of this section
16 only and shall not be used to determine coverage under the
17 California Life and Health Insurance Guarantee Association Act
18 (Article 14.7 (commencing with Section 1067)):

19 (1) "Funding agreements" means those agreements authorized
20 to be delivered or issued pursuant to Section 10541.

21 (2) "Annuity" means only those annuity contracts, including
22 period-certain annuities issued by a life insurer, that require for
23 their lawful issuance a certificate of authority from the
24 commissioner, and excludes without limitation all instruments for
25 which the commissioner's certificate of authority is not required,
26 such as promissory notes, installment loans, negotiable instruments,
27 mortgages, and debentures.

28 (3) Reinsurance contracts shall not be included as insurance or
29 annuity policies or contracts, or funding agreements. However,
30 any insurance or annuity policy or contract, including any funding
31 agreement, that is assumed by an insurer under an assumption
32 reinsurance agreement pursuant to a plan of liquidation,
33 rehabilitation, or reorganization shall, unless the plan provided
34 otherwise, be deemed to retain the issue date of the original
35 insurance or annuity policy or contract, or funding agreement that
36 is assumed.

37 (e) The provisions of this section are severable. If any portion
38 of this section is held invalid or is preempted by federal law, the
39 remainder of the section and its application shall not be affected.
40 Specifically, should any of paragraphs (1) to (6), inclusive, of

1 ~~subdivision (a) be held to be invalid or preempted by federal law,~~
2 ~~the claims included within the invalid paragraph shall be included~~
3 ~~within paragraph (7) of subdivision (a), and the remaining~~
4 ~~paragraphs shall not be affected thereby.~~

5 ~~(f) No payment shall be made to any creditor in paragraphs (8)~~
6 ~~or (9) of subdivision (a), unless all claims in paragraphs (3) to (7),~~
7 ~~inclusive, of subdivision (a) have been paid in full, together with~~
8 ~~interest at the legal rate of the date of the order commencing the~~
9 ~~proceeding or the date on which the claim became liquidated,~~
10 ~~whichever date is later. In proceedings involving life insurance~~
11 ~~companies, no payment shall be made for any claim in paragraph~~
12 ~~(7), (8), or (9) of subdivision (a) unless and until all claims in~~
13 ~~paragraph (1) of subdivision (a) have been paid in full, together~~
14 ~~with interest at the legal rate, all claims in paragraph (2) of~~
15 ~~subdivision (a) have been paid the full value of the policy or~~
16 ~~contract upon which the claim is based, as of the time of~~
17 ~~distribution to claimants, and all claims in paragraphs (3) to (6),~~
18 ~~inclusive, of subdivision (a) have been paid in full, together with~~
19 ~~interest at the legal rate from the date of the order commencing~~
20 ~~the proceeding. Notwithstanding the provisions of this subdivision,~~
21 ~~no payment of interest shall be made to any insurance guaranty~~
22 ~~association that receives early access disbursements from the estate~~
23 ~~pursuant to Section 1035.5.~~